

ORIGINALDISTRIBUTED
JUN 11 1996

No. 95-1726

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1995

UNITED STATES OF AMERICA, PETITIONER

v.

GEORGE LABONTE, ALFRED LAWRENCE HUNNEWELL,
DAVID E. PIPER AND STEPHEN DYER, RESPONDENTSON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUITMOTION OF RESPONDENT STEPHEN DYER
TO PROCEED IN FORMA PAUPERIS

Respondent herein Stephen Dyer, acting pro se, and pursuant to Rule 39 of the Rules of the Supreme Court, hereby requests leave to proceed in this case in forma pauperis for the following reasons:

1. Stephen Dyer is the Respondent herein and was the Appellant below in the First Circuit Court of Appeals in an appeal wherein the First Circuit Court granted the Respondent relief for the issue raised before this Honorable Court. The Circuit Court vacated his judgment of conviction in part and remanded it for resentencing.

EDITOR'S NOTE

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Supreme Court, U.S.
FILED

JUN 10 1996

CLERK

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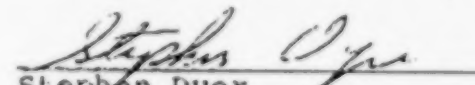
2. The Respondent has not previously been granted leave to proceed in forma pauperis in the U.S. District Court or the First Circuit Court of Appeals.

3. The Respondent and his family are not financially able to retain legal counsel for this appeal.

4. The Respondent's Declaration in support of this Motion is attached hereto.

WHEREFORE, Respondent Stephen Dyer respectfully requests leave to proceed in forma pauperis pursuant to Rule 39 of the United States Supreme Court and that the Court appoint counsel to appear for the Respondent in all court proceedings including the oral arguments.

Respectfully submitted,


 Stephen Dyer
 03117-036 (D-2)
 2680 HWY 301 South
 Jcsup, GA 31599

Dated: June 10, 1996

AFFIDAVIT OR DECLARATION IN SUPPORT OF MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

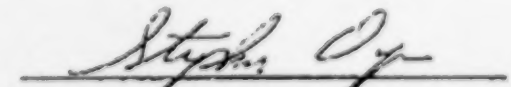
I, STEPHEN DYER the Respondent, in the above-entitled case. In support of my motion to proceed without being required to prepay fees, costs or give security therefor, I state that because of my poverty I am unable to pay the costs of this case or to give security therefor; and I believe I am entitled to redress.

I further swear that the responses I have made to the questions and instructions below relating to my ability to pay the cost of proceeding in this Court are true.

1. Are you presently employed? Yes ☐ No ☒
 - a. If the answer is yes, state the amount of your salary or wages per month and give the name and address of your employer.
 - b. If the answer is no, state the date of your last employment and the amount of salary or wages per month which you received.
2. Have you received within the past twelve months any income from a business, profession or other form of self-employment, or in the form of rent payments, interest, dividends, or other sources? Yes ☒ No ☐
 - a. If the answer is yes, describe each source of income and state the amount received from each during the past twelve months. \$3,600 in rental income.
3. Do you own any cash or have a checking or savings account? Yes ☐ No ☒
 - a. If the answer is yes, state the total value of the items owned.
4. Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishings and clothing) Yes ☒ No ☐
 - a. If the answer is yes, describe the property and state its approximate value.
 Condo (2 Bedroom) FMV \$26,000. Mortgages \$22,500 in first & second mortgages.
5. List the persons who are dependent upon you for support and state your relationship to those persons.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: June 10, 1996.


 (Signature)

Stephen Dyer
 Reg. No. 03117-036
 2680 HWY 301 SOUTH, D-2
 JESUP, GA 31599

No. 95-1726

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1995

UNITED STATES OF AMERICA, PETITIONER

v.

GEORGE LABONTE, ALFRED LAWRENCE HUNNEWELL,
DAVID E. PIPER AND STEPHEN DYER, RESPONDENTS

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE FIRST CIRCUIT

RESPONDENT STEPHEN DYER'S OPPOSITION BRIEF TO PETITION

STEPHEN DYER
Reg. No. 03117-036
2680 HWY 301 South, D-2
Jesup, GA 31599

QUESTION PRESENTED

Whether the Sentencing Commission's implementation of the Career Offender Guideline conflicts with the Commission's obligation under 28 U.S.C. 994(h) to "assure that the guidelines specify a sentence to a term of imprisonment at or near the maximum term authorized for categories of" career offenders.

OPINION BELOW

The Respondent's opinion of the Court of Appeals for the First Circuit is reported at 70 F.3d 1396 and is contained in Petitioner's Appendix at 1a-53a.

JURISDICTION

Jurisdiction of this Honorable Court is allowed pursuant to U.S.C. § 1254(1).

STATUTORY PROVISION INVOLVED

Petitioner has correctly set forth the statutory provision and the U.S. Sentencing Guideline Commentary that is involved in this case.

STATEMENT OF THE CASE

Respondent Stephen Dyer respectfully opposes the Petition for Writ of Certiorari on the grounds stated in the other Respondent's briefs in Opposition to the Petitioner's Writ of Certiorari, and for those legal reasons cited in the First Circuit court of Appeals.

On page 17 of the Petitioner's Writ for Certiorari the Government states that "[t]he ultimate resolution of the issue will have a significant effect on the periods of incarceration for the country's most serious drug offenders." The Respondent Dyer is an example of the "overkill" sentences to be achieved by affirming the government's Writ of Certiorari. All of the Respondent's are not "serious drug offenders". At most petty thieves and small time drug users and small street dealers characterize the Respondents.

Respondent Dyer would have served less than 24 months before applying the Career Offender enhancement. The three prior offenses are a perfect example of the misuse of this enhancement if brought to the extreme sentences that the Government is attempting to enforce. One of Mr. Dyer prior offenses involved a commercial "burglary". It was according to the facts of his case an "attempted shoplifting" of prescription drugs which he had ran out of. He went to the store during normal business hours, entered their opened front store and legally entered the store. When he saw that the pharmacy department was closed he "panicked". He saw the Tussionex grabbed it from the shelf after forcing open an interior door to the pharmacy area. He picked it up. Realizing what he had done he put the bottle back on the counter. This crime caused him to go from a 24 month sentence to a 262 months. His other crime was selling one (1) of his own legally prescribed Glutethimide to an undercover agent in a sting operation pursuant to the pleas of his girlfriend. Rather than go through a long costly and protracted litigation many defendants like the Respondent's plea

bargain to an offense which has dire consequences in the future. For the Respondent's petty crimes he will serve an additional 19 to 20 years. He like the other Respondents are not serious drug offenders. Like most criminal prosecutions the government's cases involve the petty offenders who suffer the unconscionable consequences of a sentencing guideline that at times is both unfair and possibly "cruel and inhuman punishment". The crimes of the Respondent in no stretch of the imagination warrant a 262 month sentence for his petty crimes. Even with the First Circuit ruling the Respondent Dyer's sentence would be over 210 months

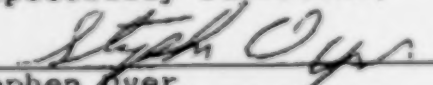
REASONS FOR DENYING PETITION

The Respondent Dyer adopts all of the arguments presented before this Honorable Court by the other Respondents and the First Circuit Court of Appeals.

CONCLUSION

The Petition for Writ of Certiorari should be denied.

Respectfully submitted,


Stephen Dyer
Reg. No. 03117-036
2680 HWY 301 South, D-2
Jesup, GA 31599

Stephen Dyer
03117-036 (D-2)
2680 HWY 301 South
Jesup, GA 31599

June 10, 1996

United States Supreme Court
Washington, DC 20543

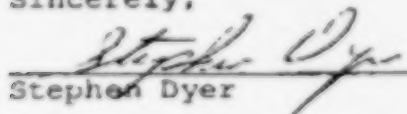
Attention: E. Kathleen Tycz
Documents Control

Dear Ms. Tycz:

Enclosed herewith are three (3) copies of my In Forma Pauperis Motion and my Motion to Object to the Court granting Certiorari. Your assistance in this matter is gratefully appreciated. Your due diligence will preserve my rights more than my prior three attorneys.

I have also followed your instructions and mailed these and faxed a copy to your attention

Sincerely,


Stephen Dyer

FAXED TO (202)479-3021 ATTENTION: E. KATHLEEN TYCZ, DOCUMENTS CONTROL